

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION
4

5 UNITED STATES OF AMERICA, * Case No. CR-03-B-338-S
6 v. * Birmingham, Alabama
7 JASON BROWN, * August 27, 2003
8 Defendant. * 2:20 p.m.
9 *****

10 TRANSCRIPT OF PLEA
11 BEFORE THE HONORABLE SHARON LOVELACE BLACKBURN
12 UNITED STATES DISTRICT JUDGE

13 FOR THE UNITED STATES:
14 Richard C. Smith
15 Richard N. Wiedis
16 U.S. Department of Justice
17 Criminal Division, Fraud Section
1400 New York Avenue NW, Suite 1400
Washington, DC 20503

18 FOR THE DEFENDANT:
19 Joseph C. Espy, III
C. Mark Bain
20 MELTON, ESPY & WILLIAMS
P.O. Drawer 5130
21 Montgomery, Alabama 36103-5130

22 COURT REPORTER:
23 Julie A. Martin, RMR, CRR
Federal Court Reporter
24 1729 5th Avenue North
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25 Birmingham, Alabama 35203

1 P R O C E E D I N G S

2 THE COURT: We're here this afternoon in the
3 case of United States of America versus Jason Brown.
4 I know Mr. Espy. Which one is Mr. Brown? You're Mr.
5 Brown?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. And so I take it, you're
8 Mark Bain?

9 MR. BAIN: Yes, Your Honor.

10 THE COURT: Okay. If all three of you then
11 would come to the podium.

12 Mr. Brown, you earlier entered a plea of not
13 guilty to charges contained in an Indictment -- excuse
14 me -- in an Information, which is docketed in this
15 court as CR-03-B-338-S. You and your attorneys are
16 here today, because the Court has been advised that
17 you desire to enter a plea of guilty to the charges.

18 Let me first ask you, do you understand that
19 you have the right to have these charges presented to
20 a Grand Jury who would be required to find probable
21 cause before you could be indicted and charged with a
22 federal crime?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And have you waived that right
25 and executed a waiver of the right to have these

1 charges presented to a Grand Jury?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And that has been filed with the
4 Court; is that right?

5 MR. ESPY: Yes, ma'am. That was filed
6 before Judge Greene.

7 THE COURT: All right. I'm going to go over
8 in some detail with you the charges later on, but just
9 briefly at the beginning, have you gone over all the
10 charges in detail with your attorneys?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you understand the
13 charges against you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And I'm going to ask you that
16 again also, but let me ask you how do you wish to
17 plead to the charges in the Information?

18 THE DEFENDANT: Guilty.

19 THE COURT: Before accepting your plea of
20 guilty, Mr. Brown, there are certain matters into
21 which I must inquire, and this will necessitate your
22 being placed under oath. I want to point out to you
23 that while under oath, I may ask you certain questions
24 that are pertinent to the charges in the Information
25 and other matters which may be pertinent later to your

1 sentencing.

2 Any responses to my questions must be full,
3 complete and accurate, and a false response could
4 subject you to prosecution for perjury or false
5 statement. Do you understand?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you still desire to enter
8 your plea of guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. I'm going to request
11 you be placed under oath at this time.

12 (Defendant sworn.)

13 THE COURT: Mr. Brown, if anything is said
14 here today that you do not fully understand, I want
15 you to interrupt the proceedings and either ask me to
16 clear it up for you or allow you an opportunity to
17 speak with your lawyers. Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: It's not uncommon for pleas of
20 guilty to be offered in reliance on a plea bargain or
21 plea agreement between the defendant, his attorney and
22 the U.S. Attorney's office. Plea bargains or plea
23 agreements are permissible, but they are not binding
24 on the court. In other words, it is the judge who
25 makes the final decision as to an appropriate

1 sentence.

2 But when a defendant is entering a plea of
3 guilty in reliance on a plea bargain or plea
4 agreement, then the Court needs to know the terms of
5 that agreement. So, at this time, I'm going to ask the
6 -- you're not an Assistant U.S. Attorney. Are you a
7 Department of Justice attorney?

8 MR. WIEDIS: Department of Justice Senior
9 Trial Attorney, Richard Wiedis, for the record.

10 THE COURT: Mr. Wiedis is going to state for
11 the record in just one second, because I want to pull
12 it up, I've looked at it and read it, but the
13 pertinent terms of the plea agreement that's been
14 executed and filed in your case.

15 MR. WIEDIS: And, Your Honor, it has been
16 submitted for the record, but I will summarize it at
17 the Court's request.

18 The United States has entered into a plea
19 agreement with Mr. Brown upon which Mr. Brown will
20 waive Indictment and plead guilty in the Northern
21 District of Alabama to one count of conspiracy in
22 violation of 18, U.S.C., Section 371 and one count of
23 criminal forfeiture in violation of 18, U.S.C., Section
24 981(a)(1)(C) and 28, U.S.C., Section 2461.

25 The defendant has also agreed to make

1 restitution. As I've stated, there's a provision that
2 requires him to forfeit to the United States
3 Government any proceeds that are traceable to or
4 derived from the conspiracy offense.

5 He's been informed of the maximum possible
6 sentence in this case. It's not more than five years
7 and/or a fine not to exceed two hundred fifty thousand
8 dollars or twice the gain or loss, as well as a term
9 of supervised release not to exceed three years and a
10 mandatory special assessment of one hundred dollars.

11 He's been informed in the plea agreement
12 that the case will be governed by the United States
13 Sentencing Guidelines. And he understands that no
14 promises have been made to him. He understands that
15 the Court will determine the sentence, and it will not
16 be determined by the plea agreement.

17 He has said that he's familiar with the
18 charges. He's acknowledged his guilt. He's agreed to
19 cooperate with the government in its continuing
20 investigation. He has agreed to waive certain
21 constitutional rights which relate to his appeal of
22 the sentence.

23 THE COURT: You may have mentioned this.
24 Did you mention at the beginning that you plan to
25 recommend a three-level reduction for acceptance of

1 responsibility?

2 MR. WIEDIS: I did not mention that, Your
3 Honor. The government has agreed to recommend a
4 three-level reduction for acceptance of responsibility
5 as well as make a motion under 5K1.1 of the United
6 States Sentencing Guidelines if the defendant provides
7 substantial assistance.

8 THE COURT: Well, is that contemplated that
9 he already has provided substantial assistance, so
10 that you will be filing a motion, or is that --

11 MR. WIEDIS: Well, he has provided
12 substantial assistance and will continue to provide
13 substantial assistance.

14 THE COURT: So you will be filing a motion.
15 It just depends on what you recommend at the time of
16 sentencing, but you at this point are going to file --

17 MR. WIEDIS: I think it's fair to say, given
18 the defendant's cooperation, we will be filing such a
19 motion, although its contents are not yet determined
20 because his cooperation is continuing.

21 THE COURT: All right. Mr. Espy, Mr. Bain,
22 is there anything you need to add to the statements of
23 the Department of Justice Senior Trial Attorney
24 concerning the pertinent terms of the plea agreement?

25 MR. ESPY: No, ma'am.

1 MR. BAIN: No, ma'am.

2 THE COURT: All right. Mr. Brown, you've
3 heard the statements of your attorneys, and the
4 government's attorney, concerning the pertinent terms
5 of the plea agreement. To the best of your knowledge,
6 are those statements complete and accurate?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Is there anything you need to
9 add to the statements of the government attorney
10 concerning the pertinent terms of the plea agreement?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: All right. I want to go over in
13 some detail with you some of the things in the plea
14 agreement, however.

15 First of all, let me ask you if you and your
16 attorneys have discussed the Sentencing Guidelines
17 which are going to apply to your sentence if the Court
18 accepts your plea of guilty this afternoon?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And do you understand that the
21 Guidelines provide for a range of sentence based in
22 large part on a combination of what's known as an
23 offense level, that is a number that represents the
24 crimes to which you're pleading guilty, and combining
25 that with a number that represents your prior criminal

1 history to give the Court a range of sentence? Do you
2 understand?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand there's no
5 parole from any custodial sentence imposed under the
6 Federal Sentencing Guidelines?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. Let me ask you, does
9 one attorney want to speak for the defendant or should
10 I ask both of you all to speak while we're on the
11 record?

12 MS. ESPY: No, ma'am. Joe Espy will speak
13 for him.

14 THE COURT: All right. Mr. Espy, are you
15 satisfied your client has a sufficient understanding
16 of the Sentencing Guidelines to make his plea here
17 today a knowing plea?

18 MR. ESPY: Yes, ma'am.

19 THE COURT: Mr. Brown, going back now to the
20 plea agreement, on Page 1 of the plea agreement, and
21 as I just briefly discussed with the government's
22 attorney, they intend to file what's called a motion
23 for downward departure to request that the Court give
24 you a sentence below the Guideline range that would
25 otherwise be applicable to your case.

1 They've stated their intention to file one,
2 but do you understand that if for some reason, after
3 reading the presentence report, I believe that the
4 motion is not due to be granted, do you understand you
5 will not have the right to withdraw your plea of
6 guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: I want to go to Page 9 of your
9 plea agreement. And at the top of the page, it's
10 entitled, "Waiver of Rights to Appeal and Collateral
11 Attack." Do you understand that in this section of
12 the plea agreement you have waived your right to
13 appeal your sentence -- and, actually, maybe I should
14 read to you the section.

15 There's certain grounds on which you can
16 appeal a sentence, which are set forth at Title 18,
17 United States Code, Section 3742, and it provides that
18 the defendant may file an appeal of their sentence if
19 it was imposed in violation of the law; it was imposed
20 as a result of an incorrect application of the
21 Sentencing Guidelines or is greater than the sentence
22 specified in the applicable Guideline range; to the
23 extent that the sentence includes a greater fine or
24 term of imprisonment, probation or supervised release
25 than the maximum established in the Guideline range,

1 or includes a more limiting condition of probation or
2 supervised release than the maximum established in the
3 Guideline range.

4 You are waiving those grounds, except that
5 you can appeal any sentence imposed above the
6 statutory maximum or if the Court upwardly departed
7 from the Guideline range. Other than that, you are
8 giving up your rights that are in that code section.
9 Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you also understand that in
12 this section contained on the next page, on Page 10 of
13 the plea agreement, that you are waiving your right to
14 file what's called a habeas corpus petition pursuant
15 to Title 28, United States Code, Section 2255. This
16 is what's called a collateral attack generally on a
17 defendant's conviction or sentence.

18 Do you understand you are waiving the right
19 to file a habeas corpus petition?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And have you discussed all these
22 rights that you are waiving or giving up on these two
23 pages of the plea agreement?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Mr. Espy, are you satisfied your

1 client understands the waivers that I've just gone
2 over with him?

3 MS. ESPY: Yes, ma'am.

4 THE COURT: And in the next section of the
5 plea agreement on Pages 10 and 11, there is a section
6 entitled "Bankruptcy Waiver." And in this section,
7 you have stipulated and agreed not to institute a
8 proceeding or participate rather in any proceeding to
9 interfere with, alter or bar enforcement of any fine
10 or restitution obligation pursuant to the automatic
11 stay or any other provision of the bankruptcy code in
12 a case that you might file or any of your creditors
13 might file.

14 Do you understand there might be a situation
15 where you would have the right to -- and I'm not
16 saying you would or would not -- but to get out from
17 under a fine or restitution? And, again, I'm not sure
18 you could in a criminal case, but assuming you could,
19 you're giving up that right. Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You also are stating in this
22 plea agreement that you will execute an order or
23 stipulation granting the United States relief,
24 assuming there was an automatic stay entered in any
25 case in which you might be involved, in order for the

1 government to enforce any fine or restitution
2 obligation ordered by the Court. Do you understand?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And, finally, do you understand
5 that in this section you are stipulating that any fine
6 or restitution obligation imposed by the Court would
7 not be dischargeable in bankruptcy? Do you
8 understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And, Mr. Espy, are you satisfied
11 your client understands the waivers in this section of
12 the plea agreement?

13 MR. ESPY: Yes, ma'am.

14 MR. WIEDIS: Your Honor, if I may, I want to
15 clarify a question that the Court had about the 5K1
16 motion. I believe the agreement provides that the
17 United States has agreed that if it determines the
18 defendant has cooperated fully, provided substantial
19 assistance in the investigation or prosecution of
20 another person who has committed an offense, and
21 otherwise complies with the terms of this agreement,
22 the United States will file a motion pursuant to 5K1.

23 And, of course, that's a determination that
24 we cannot make until such time as the defendant does
25 complete his cooperation. So I don't want the record

1 to reflect that we at this time are going to file such
2 a motion, but we have agreed to file such a motion if,
3 in fact, the defendant complies with this agreement.

4 THE COURT: Well, at this point, they feel
5 you have substantially cooperated. And what they're
6 saying is if you continue to cooperate and comply with
7 the terms of the agreement, they will file such a
8 motion. Do you understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you understand if they feel
11 at the time of your sentencing that you have not
12 complied with the terms of the plea agreement and have
13 not provided substantial assistance and choose not to
14 file a motion for downward departure, do you
15 understand you will not have the right to withdraw
16 your plea of guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Other than the plea agreement
19 that we have just discussed, has anyone promised you
20 anything or threatened you in any way in order to
21 induce you to enter a plea of guilty?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: I feel confident I said this,
24 this is something I usually say right at the
25 beginning, but sometimes I get started, and I don't

1 remember if I said this or not. Did I tell you that
2 if you don't understand anything today -- I did tell
3 you that?

4 MR. ESPY: Yes, ma'am.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: To ask me to clear it up or
7 allow you to speak with your lawyers?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand, Mr. Brown,
10 that, if I accept your plea of guilty, all that remains
11 is for sentence to be imposed, and the maximum
12 sentence you're facing on a plea of guilty to Count
13 One, which charges with you violating Title 18, United
14 States Code, Section 371, is a fine of not more than
15 two hundred fifty thousand dollars, a custodial
16 sentence of not more than five years, a supervised
17 release time of not more than three years, an
18 assessment fee of one hundred dollars, plus
19 restitution to any victim?

20 Do you understand that's the maximum
21 sentence you're facing on a plea of guilty to Count
22 One?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And you understand that in Count
25 Two the government is seeking forfeiture of any assets

1 that you obtained by use of the criminal activity to
2 which you're pleading guilty to in Count One? Do you
3 understand that?

4 THE DEFENDANT: Yes, ma'am.

5 MR. WIEDIS: Your Honor, just for purposes
6 of the record, the maximum fine would actually be two
7 hundred fifty thousand dollars or twice the gain or
8 loss, which could potentially be more than two hundred
9 fifty thousand dollars.

10 THE COURT: All right. In all likelihood,
11 it will be more than two hundred fifty thousand
12 dollars. Let me go back over the maximum fine. It is
13 two hundred fifty thousand dollars or twice the gain
14 or loss occasioned by your criminal conduct in Count
15 One. Do you understand?

16 So there's a very strong possibility, I
17 would think in this case, that the maximum fine could
18 be more than two hundred fifty thousand dollars. Do
19 you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And that amount can't be
22 determined at this time. Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Mr. Brown, do you also
25 understand that you have the right to insist upon your

1 earlier plea of not guilty, and that if you do so, the
2 -- actually, you probably haven't entered a plea
3 before today.

4 So you have the right to enter a plea of not
5 guilty and have the case proceed to trial and have the
6 government prove its case against you beyond a
7 reasonable doubt. Do you understand you have the
8 right to enter a plea of not guilty to the charges?

9 THE DEFENDANT: Yes, ma'am.

10 MR. ESPY: Your Honor, I do want to tell
11 you, we did actually have to before Judge Greene.

12 THE COURT: He did enter a plea of not
13 guilty before Judge Greene?

14 MR. ESPY: Yes, ma'am. We knew we had an
15 agreement, but it was agreed it was going to come
16 before Your Honor, so we entered a plea of not
17 guilty.

18 THE COURT: All right. Excuse me. So you
19 have the right to re-enter your not guilty plea and
20 proceed to trial. Do you understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And do you understand that if
23 you proceeded to trial that you would have the right
24 to the assistance of counsel?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you understand at a trial you
2 would have the right not to incriminate yourself or to
3 produce any witnesses?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand the government
6 would have the burden of proving at a trial that you
7 have committed these crimes and that the burden of
8 proof would be beyond a reasonable doubt? Do you
9 understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you understand that, with this
12 plea of guilty, there will be no jury trial, there will
13 be no further presumption of innocence, there will be
14 no right by you through your counsel to confront and
15 cross-examine the witnesses that the government would
16 be required to bring forth to prove your guilt?

17 In other words, you're giving up a number of
18 important constitutional rights by pleading guilty.
19 Do you understand all of that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Let me ask you, Mr. Brown, is
22 there anything that prevents you from understanding
23 anything I am saying to you here today?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: How do you physically feel?

1 THE DEFENDANT: Fine.

2 THE COURT: Within the past seventy-two
3 hours, have you taken or received any medication,
4 drugs or narcotics?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: As you did in the last plea I
7 took in a similar case, I want you to listen carefully
8 and listen that I state the elements correctly. It's
9 a little bit complicated, and I've gone through all
10 the statutes. And I'm sure you all also will do that,
11 but I want to make sure it's stated correctly.

12 Count One of the Information, Mr. Brown,
13 charges you with conspiracy to commit securities
14 fraud; false books and records and wire fraud, all in
15 violation of Title 18, United States Code, Section
16 371.

17 And I'm going to just go through in quite
18 some detail the charges. First, I want to read a lot
19 of the Information on the record.

20 The introduction to Count One charges that
21 you were employed at HealthSouth Corporation since
22 1994; that you worked in the accounting division from
23 the beginning of your employment until mid 1996; that
24 from mid 1996 until the end of 1997, you worked in the
25 Corporate Development Department; that you then moved

1 to the Treasury Department; and then in May of 2000,
2 you were promoted to the position of Vice
3 President-Finance.

4 It goes on to say that HealthSouth was a
5 corporation organized under the laws of the State of
6 Delaware with its headquarters in Birmingham, Alabama.
7 HealthSouth claimed to be the nation's largest
8 provider of outpatient surgery, diagnostic imaging and
9 rehabilitative healthcare services with approximately
10 eighteen hundred locations in all fifty states, Puerto
11 Rico, the United Kingdom, Australia and Canada; that
12 HealthSouth's common stock was listed on the New York
13 Stock Exchange.

14 If you have it in front of you -- I'm sure
15 you've read it many times -- I'm just going to read
16 here, and I will say if I deviate from the
17 Information.

18 HealthSouth was an issuer of a class of
19 securities registered under Section 12 of the
20 Securities and Exchange Act of 1934. To sell
21 securities to members of the public and maintain
22 public trading of its securities in the United States,
23 HealthSouth was required to comply with the provisions
24 of the federal securities laws, including Section
25 13(a) of the Act (Title 15, United States Code,

1 Sections 78m(a) and 78o(d)) and the regulations
2 promulgated thereunder, that were designed to ensure
3 that the company's financial information was
4 accurately recorded and disclosed to the public.

5 Under provisions of the federal securities
6 laws and the provisions promulgated thereunder,
7 HealthSouth was required to, among other things, file
8 with the Securities and Exchange Commission annual
9 financial statements audited by an independent
10 accountant; file with the SEC quarterly updates of its
11 financial statements that disclosed its financial
12 condition and the results of its business operations
13 for each three-month period; make and keep books,
14 records and accounts that accurately and fairly
15 reflected the transactions and dispositions of the
16 company's assets; and devise and maintain a system of
17 internal accounting controls sufficient to provide
18 reasonable assurances that the company's transactions
19 were recorded as necessary to permit preparation of
20 financial statements in conformity with generally
21 accepted accounting principles (GAAP) and other
22 criteria applicable to such statements and to maintain
23 the accountability of assets; and reasonable
24 assurances that the recorded accountability for assets
25 was compared with the existing assets at reasonable

1 intervals and appropriate action was taken with
2 respect to any differences.

3 From 1986, when HealthSouth issued its
4 initial public offering, it filed quarterly reports,
5 called Forms 10-Q, and annual reports, called Forms
6 10-K, with the United States Securities and Exchange
7 Commission, which is located in Washington, D.C.

8 These reports were transmitted directly and
9 indirectly from HealthSouth's offices in Birmingham,
10 Alabama, to the offices of RCI Group, Inc., in
11 Washington, D.C., a filing agent that assists
12 companies in electronically filing periodic reports
13 with the SEC, and were thereafter transmitted
14 electronically to and filed electronically with the
15 SEC, where they were available to the investing
16 public.

17 I'm sorry now that I started on it, but
18 since I started -- I don't usually read the entire
19 Indictment. I deviated from my standard practice
20 here, but since I started. Actually, I don't think I
21 will continue. I think I will go on here.

22 There's a section then that talks about
23 certain relevant accounting principles, and then it
24 talks about HealthSouth's communications with
25 investors. It then talks about an earnings shortfall,

1 and then it goes to the specific allegations of the
2 conspiracy. And I left something in my chambers that
3 I need actually.

4 (Brief pause)

5 MR. ESPY: Judge, I don't know if it makes
6 any difference, but if it would help, we would waive
7 the reading of the Information or however the Court --

8 THE COURT: As I say, I'm assuming you're
9 waiving it, but I'm also going to move on anyway.

10 MR. WIEDIS: Yes, Your Honor, if the Court
11 would read Paragraph 11, that would sufficiently cover
12 the elements which the defendant has to be advised of
13 in order to enter a plea, I believe, unless the Court
14 has its own summary of the elements, which I know is
15 sometimes the Court's practice.

16 THE COURT: I think I will be going over all
17 that in a little bit more detail than that. Actually,
18 let me read that, and then I'm going to come back to
19 some other things.

20 Paragraph 11, which is the conspiracy
21 charge, says, "Between in or about the summer of 2002
22 and in or about 2003, in the Northern District of
23 Alabama and elsewhere, you knowingly and willfully
24 joined a conspiracy with other persons to commit
25 offenses against the United States; that is, a

1 conspiracy to:

2 (1), to willfully and knowingly make and
3 cause to be made false and misleading statements of
4 material fact in applications, reports and documents
5 required to be filed under the Securities and Exchange
6 Act of 1934 and the rules and regulations thereunder
7 in violation of Title 15, United States Code, Sections
8 78m(a) and 78ff and Title 17, Code of Federal
9 Regulations, Sections 240.13a-1; 13a-13 13b2-2;

10 (2), to willfully and knowingly falsify
11 books, records and accounts of HealthSouth in
12 violation of Title 15, United States Code, Sections
13 78m(b)(2)(A) and (B), 78m(b)(5) and 78ff and Title 17,
14 Code of Federal Regulations, Section 240.13b2-1; and

15 (3), to devise and attempt to devise a
16 scheme and artifice to defraud and to obtain money and
17 property by means of material false and fraudulent
18 pretenses, representations and promises and to
19 knowingly transmit and cause to be transmitted, by
20 means of wire communication, in interstate and foreign
21 commerce, writings, signs, signals and sounds for the
22 purpose of executing such scheme and artifice in
23 violation of Title 18, United States Code, Section
24 1343.

25 Title 18, United States Code, Section 371

1 makes it a separate federal crime or offense for
2 anyone to conspire or agree with someone else to do
3 something which, if actually carried out, would amount
4 to another federal crime or offense. So, under this
5 law, a conspiracy is an agreement or a kind of
6 partnership in criminal purposes in which each member
7 becomes the agent or partner of every other member.

8 In order to establish a conspiracy offense,
9 the government would not be required to prove that all
10 of the people named -- actually, there are no other
11 names, no specific names, but they would not be
12 required to prove the names of people, just that you
13 conspired with one other person.

14 They wouldn't have to prove that you all
15 entered into any formal type of agreement, that the
16 agreement was written down, but they would have to
17 prove beyond a reasonable doubt before you could be
18 convicted:

19 First: That two or more persons, in some
20 way or manner, came to a mutual understanding to try
21 to accomplish a common and unlawful plan as charged --
22 and I may have been saying Indictment, but it is in
23 the Information. And I just read the three objects of
24 the conspiracy that you're charged with.

25 Second: That you, knowing the unlawful

1 purpose of the plan, willfully joined in it;

2 Third: That one of the conspirators during
3 the existence of the conspiracy knowingly committed at
4 least one of the methods or overt acts described in
5 the Information. And those overt acts are listed
6 beginning on Page 8 and going to Page 9 of the
7 Information. And;

8 Fourth: That such overt act was knowingly
9 committed at or about the time alleged in an effort to
10 carry out or accomplish some object of the conspiracy.

11 I'm going to go over in a little more detail
12 about the charge in Count One. Count One charges you
13 with conspiracy, with three separate objects of that
14 conspiracy. And the government would have the burden
15 of proving that you conspired with at least one or
16 more persons to accomplish one of the objects of the
17 conspiracy.

18 There are three separate ones listed, but
19 they would only have to prove beyond a reasonable
20 doubt that you conspired to violate one of the
21 objects. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: The first object of the
24 conspiracy count charges you with conspiracy to
25 willfully and knowingly make and cause to be made

1 false and misleading statements of material fact in
2 applications, reports and documents required to be
3 filed under the Securities and Exchange Act of 1934
4 and the rules and regulations thereunder in violation
5 of Title 15, United States Code, Sections 78m(a) and
6 78ff and Title 17, Code of Federal Regulations,
7 Section 240.13a-1; 13a-13 and 13b2-2.

8 Title 15, U.S. Code, Section 78m(a) requires
9 that every issuer of a security registered pursuant to
10 Section 78l of Title 15 file with the Securities and
11 Exchange Commission, such information and documents as
12 the Commission may require to be included in or filed
13 with an application or registration statement filed
14 pursuant to Section 78l of Title 15; and, two, such
15 annual reports, certified if required by the rules and
16 regulations of the Commission by independent
17 accountants, and such quarterly reports as the
18 Commission may prescribe.

19 The Commission is charged with administering
20 and enforcing Securities laws, and in order to perform
21 its function must receive accurate and truthful
22 information.

23 Before you could be found guilty of
24 violating Title 15, U.S. Code, Section 78m(a), and the
25 regulations implementing the statute, the government

1 would have the burden of proving beyond a reasonable
2 doubt, that -- and actually, this is the substantive
3 offense. They're charging that you conspired to
4 commit this offense, not that you in fact did it, but
5 that you made or conspired to make or caused to be
6 made false and misleading statements of material fact
7 in applications, reports or documents required to be
8 filed under the Securities and Exchange Act of 1934
9 and the rules and regulations thereunder; and, second,
10 that you acted knowingly and willfully.

11 Do you understand the charge against you in
12 the first object of the conspiracy count?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: The second object of the
15 conspiracy is that you conspired to willfully and
16 knowingly falsify books, records and accounts of
17 HealthSouth in violation of Title 15, United States
18 Code, Section 78m(b)(2)(A) and (B), and Title 17, Code
19 of Federal Regulations, Section 240.13b2-1.

20 Title 15, U.S. Code, Section 78m(b)(2)(A)
21 and (B) provides that every issuer which has a class
22 of securities registered pursuant to Section 781 of
23 Title 15 and every issuer which is required to file
24 reports pursuant to Section 78o(d) of this title
25 shall:

1 (A), Make and keep books, records and
2 accounts, which, in reasonable detail, accurately and
3 fairly reflect the transactions and dispositions of
4 the assets of the issuer;

5 (B), and every issuer shall devise and
6 maintain a system of internal accounting controls
7 sufficient to provide reasonable assurances that;

8 (i) transactions are executed in accordance
9 with management's general or specific authorization;

10 (ii) transactions are recorded as necessary
11 (I) to permit preparation of financial statements in
12 conformity with generally accepted accounting
13 principles or any other criteria applicable to such
14 statements, and (II) to maintain accountability for
15 assets;

16 (iii) access to assets is permitted only in
17 accordance with management's general or specific
18 authorization; and

19 (iv) and the recorded accountability for
20 assets is compared with the existing assets at
21 reasonable intervals and appropriate action is taken
22 with respect to any differences.

23 And, finally, they're also charging that you
24 conspired to violate Title 15, U.S. Code, Section
25 78m(b) (5) which provides that no person shall

1 knowingly circumvent or knowingly fail to implement a
2 system of internal accounting controls or knowingly
3 falsify any book, record, or account described in
4 paragraph (2) of this title.

5 And paragraph (2) of the title says, such
6 annual reports certified if required by the rules and
7 regulations of the Commission by independent public
8 accountants, and such quarterly reports, as the
9 Commission may prescribe. And I guess -- I don't know
10 if I have to read anything else. One more second.

11 (Brief pause)

12 There are a number of things, as you know,
13 that the government in the second object of the
14 conspiracy is charging that you knowingly and
15 willfully conspired with other people to violate
16 certain federal statutes and also a provision of the
17 Code of Federal Regulations, which provides that no
18 person shall directly or indirectly falsify or cause
19 to be falsified any book, record or account subject to
20 Section 13(b)(2)(A) of the Securities and Exchange
21 Act.

22 That was all very wordy, but basically I
23 read you the statutes that require certain things to
24 be done. And the government is saying in this count
25 of the conspiracy or this portion of the conspiracy

1 charge that you knowingly and willfully agreed with
2 someone else to violate those federal statutes in that
3 particular provision of the Code of Federal
4 Regulations.

5 Do you understand the charge against you in
6 the second object of the conspiracy?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: The third object of the
9 conspiracy is that you conspired to devise and attempt
10 to devise a scheme and artifice to defraud and to
11 obtain money and property by means of materially false
12 and fraudulent pretenses, representations and promises
13 and to knowingly transmit and cause to be transmitted,
14 by means of wire communication, in interstate and
15 foreign commerce, writing, signs, signals and sounds
16 for the purpose of executing such scheme or artifice
17 in violation of Title 18, United States Code, Section
18 1343. Thus, this section of the conspiracy charges
19 you with conspiring to commit an offense which would
20 be in violation of Title 18, U.S. Code, Section 1343.

21 Title 18, United States Code, Section 1343
22 makes it a federal crime or offense for anyone to use
23 interstate wire communications facilities in carrying
24 out a scheme to defraud.

25 Do you understand the charge against you in

1 the third object of the conspiracy?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And, finally, the last count is
4 a forfeiture count, which is moving the court to
5 forfeit any property, real or personal, which
6 constitutes or is derived from proceeds traceable to
7 specified unlawful activity committed by you. Do you
8 understand the charge against you in Count Two?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And have you had sufficient time
11 to -- let me say one other thing. Do you understand
12 that when I said to you you must have acted knowingly
13 and willfully that that means that you had to act
14 purposely with specific intent to disregard or disobey
15 the law and not by accident or mistake? Do you
16 understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you had sufficient time,
19 Mr. Brown, to discuss the charges in the Information
20 with your attorneys?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And are you satisfied with your
23 lawyers and the work they have done for you?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Mr. Espy, are you satisfied that

1 the defendant fully understands the charges,
2 specifically Count One, but both counts in the
3 Information and the consequence of entering a plea of
4 guilty to the charges?

5 MR. ESPY: Yes, ma'am.

6 THE COURT: Are you also satisfied that he
7 is knowingly and voluntarily entering his plea of
8 guilty?

9 MR. ESPY: Yes, ma'am.

10 THE COURT: As his attorney, have you had
11 sufficient time to investigate the case, the charges
12 against Mr. Brown, any possible defenses that he might
13 have to the charges and to generally give him counsel
14 and advice?

15 MR. ESPY: We have, Your Honor.

16 THE COURT: Just one second. Mr. Wiedis, I
17 didn't have time to check it myself, but that "twice
18 the gain" language did not sound correct to me, so I
19 sent my courtroom deputy down -- and we don't have a
20 definitive answer, but apparently it's two times the
21 gain or loss only on a substantive count, not on a
22 conspiracy count.

23 Now, I don't know if that's right or not,
24 but, of course, I guess I'm giving him the high end
25 here if I tell him it's twice the gain or loss, but I

1 didn't think it was right. It didn't sound right to
2 me, and I think it's only on a substantive count.

3 MR. WIEDIS: Let me double check that.

4 MR. ESPY: We accept this. We understand it
5 could possibly be the worst. I mean --

6 THE COURT: You're pleading guilty
7 understanding, although --

8 MR. ESPY: The worst of it.

9 THE COURT: I've given you the worst case
10 scenario as a possible penalty, meaning that it could
11 be twice the gain or loss, but I'm not sure you are
12 actually facing that. It could be that the maximum
13 you're facing -- we can't get a definitive answer
14 unfortunately. No one at probation, the senior people
15 are -- but you understand I gave you the worst
16 possible scenario, but it could be less?

17 THE DEFENDANT: Yes.

18 THE COURT: I want you to listen carefully
19 to what the Department of Justice Attorney is going to
20 say. He is now going to outline for you and for me
21 briefly certain of the facts he would expect the
22 government to prove should this case proceed to trial.

23 MR. WIEDIS: Your Honor, I'm going to skip
24 some of the introductory paragraphs, and I will get to
25 the factual basis.

1 THE COURT: I want you to tell me where
2 you're reading.

3 MR. WIEDIS: I'm going to be reading from
4 the factual basis that was previously filed with this
5 court.

6 THE COURT: Let me get it. Just one second.
7 Mr. Brown, if, while he is speaking, he says anything
8 that is not true or that you do not believe the
9 government can prove, I want you to interrupt him and
10 let me know. Do you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And I think it would be best if
13 you stop him at the time if he says something that is
14 not true.

15 All right. Go ahead.

16 MR. WIEDIS: I'm going to start with
17 Paragraph 5, which is the first substantive paragraph.
18 The Conspiracy: Beginning at least in 1996, the CEO,
19 the person who has not been named but identified as
20 the CEO of HealthSouth at that time, and other senior
21 officers and members of HealthSouth's accounting staff
22 engaged in a conspiracy and scheme and artifice to,
23 among other objectives, defraud investors by
24 artificially inflating HealthSouth's earnings and
25 earnings per share, make false entries in

1 HealthSouth's books and records, file false statements
2 with the SEC and commit mail and wire fraud.

3 HealthSouth's CEO and other senior officers
4 reviewed monthly and quarterly preliminary reports
5 showing HealthSouth's true and actual financial
6 results, which usually showed that HealthSouth had not
7 met earnings per share expectations. These senior
8 officers would then direct HealthSouth's accounting
9 staff to manipulate HealthSouth's books, accounts and
10 reports to ensure that HealthSouth's earnings per
11 share number met or exceeded those expectations.

12 Methods to increase earnings included making
13 entries to reduce offsets against revenues or to
14 reduce expenses. Corresponding fraudulent entries
15 were made to increase assets and decrease liabilities
16 on HealthSouth's balance sheet. Such entries were
17 made in, among other accounts, HealthSouth's Property,
18 Plant and Equipment, (PP&E) accounts; cash accounts;
19 inventory accounts, intangible asset (goodwill)
20 accounts; and investment portfolio.

21 These entries caused the quarterly and
22 annual financial statements filed with the SEC for the
23 years from before 1994 through 2002, that is, Forms
24 10-Q and Forms 10-K, to be materially false. The
25 cumulative overstatement of assets summed more than a

1 billion dollars. Some of these financial statements
2 were transmitted electronically from Birmingham,
3 Alabama to Washington, D.C., to be filed with the SEC.

4 The CEO and other conspirators benefited
5 from the conspiracy by receiving salaries, bonuses and
6 increased value in their stock and stock options. The
7 investing public suffered to the extent that they paid
8 for shares whose value was inflated by the aforesaid
9 conspiracy.

10 Your Honor, the government would also show
11 that Defendant Jason Brown was employed at HealthSouth
12 Corporation since 1994. The Defendant Brown worked in
13 the accounting division from the beginning of his
14 employment until mid 1996. From mid 1996 until the
15 end of 1997, the Defendant Brown worked in the
16 Corporate Development Department. He then moved to
17 the Treasury Department. In May of 2000, Defendant
18 Brown was promoted to the position of Vice
19 President-Finance.

20 In the course of his employment at
21 HealthSouth, Defendant Brown would and did become
22 aware of HealthSouth's earnings shortfalls and the
23 potential adverse effect on HealthSouth's stock price
24 if these shortfalls were disclosed to the public.

25 In or about the summer of 2002, Defendant

1 Brown learned of, and knowingly and voluntarily joined
2 in, the above-described conspiracy and scheme and
3 artifice. Defendant Brown was instructed by other
4 senior officers of HealthSouth to create a bogus
5 document showing the sale of another publicly-traded
6 company -- I'm sorry -- showing the sale of stock of
7 another publicly-traded company owned by HealthSouth
8 in 2002 when, in fact, as the conspirators well knew,
9 the stock had been sold for more than twenty-seven
10 million dollars in 2001.

11 In meetings with other senior officers,
12 Defendant Brown discussed steps that would have to be
13 taken to make the bogus stock sale document appear
14 legitimate. Defendant Brown was instructed to have
15 the phony document show that the stock was sold in
16 small blocks over a period of several weeks. This
17 would be done to ensure that the number of shares
18 shown on the bogus document as sold on a particular
19 day in 2002, did not exceed the actual volume of stock
20 in the company that traded on that day.

21 Further, in creating the bogus stock sale
22 document, Defendant Brown would confirm the stock's
23 actual trading price on the dates in 2002 when the
24 bogus stock sales would purportedly take place.

25 Finally, Defendant Brown and others would

1 cause actual wire transfers from HealthSouth's
2 investment account in amounts that were consistent
3 with the purported proceeds of the bogus stock sales.
4 Employing all of the above-listed devices, Defendant
5 Brown created the bogus document which the
6 conspirators would provide to HealthSouth's auditors
7 to give the appearance that the stock sale of the
8 publicly-traded company occurred in 2002.

9 Defendant Brown provided the false and
10 fraudulent stock sale document to others in
11 HealthSouth's Treasury Department and accounting staff
12 who provided the bogus document to HealthSouth's
13 auditors.

14 In addition, Your Honor, the United States
15 would show beyond a reasonable doubt the following:
16 Same-store sales -- same-store volume figures compared
17 operating results from a defined set of facilities for
18 the current quarter with the operating results for the
19 same set of facilities for the same period during the
20 prior year.

21 Same-store volume is one of the statistics
22 that is relied upon by Wall Street analysts in
23 evaluating for their clients and the public the
24 financial condition and operating results of
25 HealthSouth.

1 In a meeting which took place near the end
2 of 2002, Defendant Brown met with other senior
3 officers at HealthSouth and discussed the fact that
4 HealthSouth's outpatient same-store volume had
5 declined significantly in the third quarter of 2002
6 compared to the same quarter for 2001. At the
7 direction of the other senior officers, Defendant
8 Brown altered the actual same-store volume numbers in
9 HealthSouth's books and records, making it appear that
10 same-store volume for the third quarter of 2002 had
11 not declined as much as the actual operating results
12 showed.

13 Defendant Brown and others then caused the
14 falsified outpatient same-store volume numbers to be
15 included in a press release which was sent via
16 interstate wire to HealthSouth's analysts and to the
17 public.

18 Defendant Brown and others also maintained
19 in the files, books and records of HealthSouth the
20 above-described documents and records which they knew
21 contained false information.

22 THE COURT: All right. Mr. Brown, you've
23 heard the Department of Justice attorney outline
24 certain of the facts that the government would expect
25 to prove should this case proceed to trial. Are those

1 facts substantially correct?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Mr. Brown, you're not required
4 to enter a plea of guilty, and you are free at this
5 time to withdraw your plea of guilty and re-enter a
6 not guilty plea. Have you heard anything here today
7 that causes you to want to reconsider your decision to
8 enter a plea of guilty?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you still desire to enter
11 your plea of guilty?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: The Court finds your plea of
14 guilty to Count One and the forfeiture count is freely
15 and voluntarily entered, and the plea is accepted by
16 the Court. The requisite factual basis also exists.

17 I will set sentencing for sometime away,
18 maybe six months. I would normally set it for three
19 months, but I would anticipate that you would all
20 would want it longer than that.

21 MR. SMITH: Six months, Your Honor, may
22 be --

23 THE COURT: Too long?

24 MR. SMITH: Six months will be fine. We
25 will revisit it if we need more time.

1 THE COURT: I tell you what, let me do it
2 this way: What I normally do is to set it in three
3 months, so I will set it in three months. If you want
4 me to continue it, you can file a motion.

5 MR. SMITH: File a motion, yes, ma'am.

6 MR. ESPY: Judge, can I ask a question?

7 THE COURT: Mr. Brown, you are continued on
8 your same bond with same terms and conditions,
9 including the condition that you not violate any
10 local, state or federal law. All right. Mr. Espy?

11 MR. ESPY: We had received a document styled
12 Guilty Plea Advice of Rights Certification.

13 THE COURT: If you filled it in, that's
14 great. And you may file it.

15 MR. ESPY: Do you want me to file it in open
16 court?

17 THE COURT: Yes, that's great.

18 MR. ESPY: We did fill it in. He signed it,
19 and I did, Your Honor.

20 THE COURT: Is it styled at the top?

21 THE CLERK: Yes.

22 THE COURT: That's great. Thank you very
23 much.

24 (Court adjourned.)

25

1 C E R T I F I C A T E

2

3 I certify that the foregoing is a correct
4 transcript from the record of proceedings in the
5 above-entitled matter.

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9 _____
JULIE A. MARTIN, RMR, CRR

DATE

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